IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

IN RE	)	
	)	
FRED L. HEGEL,	)	**Case No. 99-21108**
	)	
Debtors.	)	**MEMORANDUM OF DECISION**
	)	**AND ORDER**
	)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Louis Garbrecht, Couer d'Alene, Idaho for the Debtor.

Michael J. Paukert, PAINE, HAMBLEN, COFFIN, BROOKE & MILLER LLP, Couer d'Alene, Idaho, for Sacred Heart Medical Center.

INTRODUCTION

The rights and interests of three parties are generally involved under Idaho's medical indigency statutes: the patient, the hospital, and the county. For the most part, the competing rights and interests are established by the terms of the Idaho Code and Idaho appellate decisions. But when the patient files a petition for bankruptcy relief, the dynamics of the situation change.

This Court has addressed several bankruptcy aspects of the medical indigency statutes in prior reported opinions, *see, In re Sarty*, 99.4 I.B.C.R. 162 (Bankr. D. Idaho 1999); *In re Walker*, 97.3 I.B.C.R. 91 (Bankr. D. Idaho 1997); *In re Handy*, 97.3

I.B.C.R. 79 (Bankr. D. Idaho 1997) and several unpublished dispositions. The facts of this case present a slightly new wrinkle.

BACKGROUND[1]

On August 13, 1999, Fred Hegel ("Debtor") was emergently admitted to Sacred Heart Medical Center (Sacred Heart) and treated for coronary artery disease. The resulting bill for this medical care totals $43,343.34.

On September 9, 1999, Debtor filed a petition for relief under chapter 7 of the Bankruptcy Code. The schedules filed that same day listed Sacred Heart as an unsecured creditor with a claim "unknown" in amount.

The following day, but without notice or knowledge of the bankruptcy filing[2], Sacred Heart submitted a third party application seeking financial assistance from Kootenai County, the County of Debtor's residence, for the medical services it provided the Debtor. *See* § 31-3504(2).

Kootenai County denied Sacred Heart's third-party application on October 20, 1999. *See* § 31-3505C. On November 3, Sacred Heart appealed this decision to the

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[1] The facts set forth herein are uncontested, and are set forth in the pleadings of the parties. No evidence was submitted at the § 362(a) final hearing held on February 15, 2000.

[2] On September 17, the Bankruptcy Noticing Center ("BNC") issued the "Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines" (the "Notice"). BNC's certificate of service reflects mailing of the Notice to Sacred Heart. However, Sacred Heart asserts without contradiction that it was not aware of the bankruptcy until late November. The Debtor does not argue that Sacred Heart's September 10 filing or its actions through mid-November were done with notice or actual knowledge of the bankruptcy.

Kootenai County Board of Commissioners which scheduled a January 11, 2000 hearing to address the appeal. *See* §§ 31-3505D & 31-3505E.

Sacred Heart alleges that on November 29, it was finally notified of Debtor's bankruptcy filing. The record reflects that also on that day, November 29, the Debtor amended his schedules to add "Kootenai County Assistance" as a creditor, and provided notice to it of the bankruptcy filing. The Debtor's discharge was entered on December 15, 1999.

Sacred Heart now seeks relief from stay, § 362(d), so that it may continue with its administrative appeal and, if necessary, judicial review in its effort to secure payment from Kootenai County of medical expenses incurred by the Debtor.[3] The Debtor resists the motion. Missing from the present debate is the County, which is not a party to this contested matter and has not appeared of record in the bankruptcy case.

DISCUSSION

The medical indigency statutes

Idaho law provides for an administrative process through which an indigent patient who receives necessary medical services may apply for financial assistance from the county where the patient resides. § 31-3504(1). The statutes also provide for the filing of this application by third parties on behalf of the indigent recipient. § 31-

[3] By statute, the hospital's claim against the County is limited to $10,000. § 31-3503(1); *Walker*, 97.3 I.B.C.R. at 92. Sacred Heart professes no intention to pursue any party other than the County.

3504(2). This third party applicant can be, and often is, the medical services provider.[4]

Upon either application, the county must make an initial determination of benefits. § 31-3505C. If the application is denied, the applicant or medical services provider may appeal and ultimately may seek judicial review.

§§ 31-3505D & 31-3505G.

The key aspect of the statute, insofar as the present case, is the provision for a statutory lien in favor of the county, which arises automatically upon the filing of an application:

> (4) **Upon application** for financial assistance pursuant to this chapter **an automatic lien shall attach to all real and personal property of the applicant** and on insurance benefits to which the applicant may become entitled. The lien shall also attach to any additional resources to which it may legally attach not covered above. **The lien** created by this section **may be, in the discretion of the board, perfected upon recording**, in any county recorder's office in this state in which the applicant and obligated party own property and with the secretary of state, **a notice of application for medical indigency benefits on a uniform form** agreed to by the Idaho association of counties and the Idaho hospital association prior to June 30, 1996, **which form shall be recorded as provided herein within thirty (30) days from receipt of an application, and such lien shall have a priority date as of the date the necessary medical services were provided**. An application for assistance pursuant to this chapter shall waive any confidentiality granted by state law to the extent necessary to carry out the intent of this section.

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[4] The "applicant" is defined as the person who is or may be "requesting" financial assistance, § 31-3502(4), while the "third party applicant" means a person other than the obligated person who completes, signs and files an application on behalf of a patient. § 31-3502(15).

§ 31-3504(4) (emphasis supplied).

In both *Sarty* and *Handy*, the § 31-3504(4) liens arose pre-petition. This case is distinguishable because, as noted above, Sacred Heart's application was filed on September 10, the day after the bankruptcy petition was filed.

The automatic stay

The § 362(a) stay becomes effective immediately upon the filing of a petition for relief. Any act taken in violation of § 362(a) is void, not merely voidable. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992); *Sarty*, 99.4 I.B.C.R. at 163. This is true even if the offending party had no knowledge of the stay, since it is the violation of the stay, and not the *mens era,* which controls.

It is clear that the Court has the power to "annul" the stay:

> Despite the importance of the automatic stay as a vital protection of the bankruptcy debtor, *see In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992), 11 U.S.C. § 362(d)(1) allows a bankruptcy court to grant relief from the automatic stay "for cause." Such relief may include "terminating, annulling, modifying, or conditioning such stay." *Id.* § 362(d). Thus, as we have previously noted, "section 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *Schwartz*, 954 F.2d at 572 (citing 2 Collier on Bankruptcy, § 362.07 (15th ed. 1984)). Retroactive annulment, however, should be "applied only in extreme circumstances." *In re Shamblin*, 890 F.2d 123, 126 (9th Cir. 1989).

Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 108-09 (9th Cir. 1995). This Court, *In re Franck*, 171 BR. 893, 894-95, 94 I.B.C.R. 199, 200 (Bankr. D. Idaho 1994) agreed with *Schwartz* and *Shamblin* that such retroactive relief is extraordinary and should be sparingly granted.

Sacred Heart needs prospective relief in order to continue its administrative appeal process with the County as a non-debtor, potentially responsible party. But Sacred Heart also needs retroactive relief, in the nature of annulment of the stay, in order to protect its third party-application filed post-petition. Absent annulment, that application is void. *Schwartz*, 954 F.2d at 571.

The Debtor has made it clear that he does not oppose Sacred Heart's pursuit of the County, if it can be done without adverse consequence to him personally. But ensuring the absence of such consequence is the rub. As noted, the County is not party to this litigation, and has taken no stand on the legal issues involved.[5]

Sacred Heart makes several arguments in support of its position that the Court may appropriately (and, from the Debtor's perspective, safely) annul the stay.

Sacred Heart contends that its right to pursue the County is "independent" of either the County's or the hospital's claims against the Debtor. *Carpenter v. Twin Falls County*, 107 Idaho 575, 585-86, 691 P.2d 1190 (1984).[6] Sacred Heart analogizes the stay relief it seeks to that often sought by personal injury plaintiffs, who

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[5] There is nothing in the record to indicate that the County recorded its "notice of application" within 30 days of Sacred Heart's third party application (i.e., by October 10, 1999) and thus perfected its lien. It would be tempting to conclude that the County has no lien rights against the Debtor enforceable in or after bankruptcy. But the County is not before the Court, nor is there a proper procedural context for such rulings.

[6] *But see*, *Sarty*, 99.4 I.B.C.R. 163-64 (continuation of actions by hospital against county under third party application had sufficient impact on debtor patient so as to implicate automatic stay).

wish to pursue a state court adjudication of a debtor's liability, but solely to recover from that debtor's insurance carrier and not from the debtor personally.[7]

But when the hospital files the third party application, it triggers an immediate and automatic statutory lien in favor of the County against the Debtor. This lien is the factor that distinguishes this matter from personal injury cases. No consequence similar to the automatic blanket lien befalls the debtor/defendant in the personal injury scenario. *Compare, Beeney*, 142 B.R. at 362-363.[8] The analogy is not persuasive.

Sacred Heart also asserts that the lien did not arise in this case. It argues that, because the statute expressly provides that the lien reaches all real and personal property "of the applicant," the lien arises only when the patient files an application. However, § 31-3504(4) also states that the lien arises and attaches "upon application" without differentiating between an original application by the patient and third-party applications. This statutory language and Idaho case law led the Court in *Sarty* to conclude:

> The lien created by the statute is not conditioned on whether it is the recipient of services or the provider filing the application for assistance.

99.4 I.B.C.R. at 163. This argument also fails

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[7] *See, e.g., Patronite v. Beeney (In re Beeney)*, 142 B.R. 360, 362-363 (9th Cir. BAP 1992). *Accord*, *Green v. Welsh*, 956 F.2d 30, 33-34 (2nd Cir. 1992) (regarding similar relief from § 524 injunction which replaces § 362 stay).

[8] *See also, In the Matter of Fernstrom Storage and Van Company*, 938 F.2d 731, 735-736 (7th Cir. 1991)(addressing absence of prejudice or "monetary consequences" to debtor and balance of hardship); *In re American West Airlines, Inc.*, 148 B.R. 920, 923-924 (Bankr. D. Ariz. 1993).

Sacred Heart next attempts to downplay the impact of the lien, arguing that the County's lien right is "inchoate" until perfected. There is some support for this view found in the language of § 31-3504(4) which gives the county's board of commissioners the "discretion" to perfect the lien by recording, and requires that discretion to be exercised within 30 days of the filing of the application. And this Court in *Handy* recognized the importance of perfection to the enforcement of the lien. 97.3 I.B.C.R. at 80.

However, the Debtor is concerned that the mere existence of an "attached" lien, even absent perfection or enforcement efforts, could impact his fresh start. The practical effect of such a lien may well be to cloud the Debtor's affairs and assets until it is resolved or removed. At a minimum, the Debtor might incur legal fees in protecting his Title 11 rights. Sacred Heart's suggested approach puts the risk of future events, and the burden of monitoring and defending against them, on the Debtor.

Sacred Heart argues that there are several defenses available to the Debtor should the County seek, after Sacred Heart obtains annulment of the stay, to perfect and enforce the lien. Brief at 3, citing *Claussen v. Brookings County (In re Claussen)*, 118 B.R. 1009 (Bankr. D. S.D. 1990). But it doesn't explain why, on balance, the Debtor should be put to the expense and effort of such a defense.

It is fundamental that most rights are to be determined and evaluated as of the date of the filing of the case. *Leppaluoto v. Combs (In re Combs)*, 101 B.R. 609,

614 (9th Cir. BAP 1989). At the time of the filing of the Debtor's petition for relief, there was no application, and no lien.

The limits on the extraordinary remedy of annulment recognize the burden on a movant seeking to alter the status quo as of filing by validating a void post-petition act. Sacred Heart has not persuaded the Court that the situation existing here on the date of the filing of the petition should be so altered. Doing so, in the absence of agreement by the County to forgo its statutory rights against the Debtor, puts the liability of his assets for the County's claims into doubt, and exposes him to the potential burden, cost and expense of defending his fresh start. It is not necessary that the Court conclusively find the Debtor's assets would become subject to the § 31-3504(4) lien or that such lien would be capable of perfection or enforcement in order to hold that the shifting of the risk and burden to the Debtor is at odds with the purpose and operation of the Code.

CONCLUSION

Based on the foregoing, the Court has determined that Sacred Heart's motion for annulment of stay should be denied. By virtue of the denial of retroactive relief, the filing of the third party application on September 10, 1999 is a void act.

Under the circumstances, and by virtue of this decision on the question of annulment, there is no apparent cause supporting grant of prospective relief from the stay. The Motion will be denied.

An appropriate order shall be entered.

Dated this 11th day of April, 2000.